

Appeal from a decision of the Utah State Office, Bureau of Land Management, rejecting in part oil and gas lease offers U-47617, U-47623, and U-47624, and granting in part the same lease offers subject to no surface occupancy stipulations.

Affirmed.

1. Oil and Gas Leases: Discretion to Lease -- Oil and Gas Leases:
Stipulations -- Secretary of the Interior

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest. However, if he decides to issue a lease, he may require the acceptance of stipulations reasonably designed to protect environmental and other land use values as a condition precedent to issuance of such a lease.

APPEARANCES: Steven H. Findeiss, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Ted C. Findeiss has appealed from a decision dated October 22, 1981, by the Utah State Office, Bureau of Land Management (BLM), rejecting in part noncompetitive over-the-counter oil and gas lease offers U 47617, U 47623, and U 47624, and granting them in part subject to no surface occupancy stipulations. The lease offers include land within the Interstate 70 visual corridor and Sid's Mountain proposed primitive area.

In its decision concerning those leases, BLM stated that an oil and gas environmental analysis was prepared for lands within the area administered by the Moab District Office, of which the subject areas are a part. Excerpts from the Environmental Analysis Record (EAR) were included in the case records. The decision states as regards the lands at issue:

The Interstate 70 visual corridor through the San Rafael Swell has been identified as having scenic and archaeological values such as pictographs and petroglyphs. The corridor has been recommended for withdrawal from all forms of entry, including mineral leasing. The natural, unintruded appearance of the area is an outstanding feature. Recreation-use figures and estimates indicate nearly 540,000 visits occur yearly for sightseeing from the seven overlooks in the corridor. The open-space quality of this area is highly significant; "wilderness" lies just off the roadside.

Some types of geological materials such as fossils may be collected and removed even though it may be illegal. Increased accessibility as a result of oil and gas roads and trails would contribute to removal or vandalism of the values. Road construction, seismic activity, drilling, development or production would be a serious impact and would result in the loss of primitive values at Mexican Mountain.

The important resource in the I-70 corridor is the scenic value which can be enjoyed by the casual traveler as he passes through relatively untouched areas. If any of the phases of oil and gas development were to take place in this corridor, the scars of the activity would be visible for many years. If it were necessary to build an oil and gas access road in the corridor, it might lead to the opening of new trails and paths by careless individuals. These paths could be susceptible to erosion and deep, lasting scars could result.

Sid's Mountain proposed primitive area comprises approximately 100 square miles. The sheer expanse provides an unparalleled wilderness experience. Archaeological sites, mainly from the Fremont Culture, abound. The landscape is colorful, with areas of red, yellow, purple, and white contrasting markedly with each other. Arches of all shapes and sizes are numerous. This area is nearly roadless, with the exception of a few very minor jeep trails. The San Rafael Management Plan recommends this area for primitive status. The San Rafael River forms the north boundary.

Sid's Mountain proposed primitive area is a roadless area which would lose its primitive potential if roads and access were provided into it. Construction of seismic roads would carry with it enough access that the primitive character would be lost. Other development would only amplify the loss.

Any oil and gas development would be an intrusion of such magnitude that the impacts could not be mitigated.

BLM invoked the discretionary authority of the Secretary and rejected the lease offers as to the following lands:

- U-47617 T. 22 S., R. 9 E., SLM, Utah
 Secs. 11, 14, 23, and 27, all.
- U-47623 T. 22 S., R. 10 E., SLM, Utah
 Sec. 3, lots 3, 4, S 1/2 NW 1/4, SW 1/4;
 Sec. 10, W 1/2, SE 1/4;
 Sec. 11, SW 1/4;
 Sec. 12, SW 1/4 SW 1/4;
 Sec. 13, W 1/2 NW 1/4, SW 1/4;
 Secs. 14, 15, 19, 20, 21;
 Sec. 22, W 1/2 NE 1/4, SE 1/4 NE 1/4,
 W 1/2, SE 1/4.
- U-47624 T. 22 S., R. 10 E., SLM, Utah
 Sec. 23, all;
 Sec. 24, W 1/2, SE 1/4;
 Secs. 25, 26, 27;
 Sec. 28, N 1/2, SE 1/4;
 Secs. 29, N 1/2;
 Sec. 30, lots 1, 2, NE 1/4, E 1/2
 NW 1/4;
 Sec. 33, E 1/2;
 Sec. 34, N 1/2, SW 1/4;
 Sec. 35, N 1/2.

BLM granted the lease offers, subject to a no surface occupancy stipulation, as to these lands:

- U-47617 T. 22 S., R. 9 E., SLM, Utah
 Secs. 15, 21, 22, 25, 26, 28, 31,
 33, 34, and 35, all.
- U-47623 T. 22 S., R. 10 E., SLM, Utah
 Sec. 3, lots 1, 2, S 1/2 NE 1/4,
 SE 1/4;
 Sec. 10, NE 1/4;
 Sec. 11, NW 1/4;
 Sec. 12, SW 1/4 NE 1/4, NW 1/4, N 1/2
 SW 1/4, SE 1/4 SW 1/4, W 1/2 SE 1/4;
 Sec. 13, E 1/2, E 1/2 NW 1/4.
- U-47624 T. 22 S., R. 10 E., SLM, Utah
 Sec. 24, NE 1/4;
 Sec. 28, SW 1/4;
 Sec. 29, S 1/2;
 Sec. 30, lots 3, 4, E 1/2 SW 1/4, SE 1/4;
 Sec. 31, all;
 Sec. 33, W 1/2;
 Sec. 34, SE 1/4;
 Sec. 35, S 1/2.

On appeal appellant contends, inter alia: Issuance of a lease subject to a no surface occupancy stipulation is an "unconstitutional taking" and, therefore, unlawful; the environmental analysis was biased and does not represent the best interest of the public; and the decision of BLM was incorrectly made on the basis of the older oil and gas category system, which does not qualify as the environmental analysis required by Congress. Appellant cites Rocky Mountain Oil and Gas Association v. Andrus, 500 F. Supp. 1338 (D. Wyo. 1981), appeal docketed, No. 81-1040 (10th Cir. Jan. 5, 1981), as authority for the first argument. Appellant requests that the decision of BLM be overturned and that leases be issued to appellant to the extent permitted by law.

[1] The Secretary of the Interior, through BLM, has the discretion to refuse to issue oil and gas leases even where the lands have not been withdrawn from the operation of the mineral leasing laws. Udall v. Tallman, 380 U.S. 1, 4, rehearing denied, 380 U.S. 989 (1965). If the Secretary decides to issue a lease, he may require the execution of special stipulations to protect environmental and other land use values. Vern K. Jones, 26 IBLA 165 (1976); Bill J. Maddox, 22 IBLA 97 (1975); 43 CFR 3109.2-1. However, proposed special stipulations must be supported by valid reasons which reflect due regard for the public interest. Such stipulations will be upheld on appeal only if the record shows that BLM adequately considered the factors involved and if they reflect a reasonable means to accomplish a proper Departmental purpose. H. E. Shillander, 44 IBLA 216 (1979); Neva H. Henderson, 31 IBLA 217 (1977); A. A. McGregor, 18 IBLA 74 (1974). Such a decision will be affirmed in the absence of compelling reasons for modification or reversal. Esdras K. Hartley, 57 IBLA 319 (1981).

The EAR on which BLM relied substantiates the conclusions reached by BLM. The EAR was quoted in the decision itself as the EAR specifically relates to the Interstate 70 visual corridor and Sid's Mountain proposed primitive area. The EAR recommends no leasing or leasing subject to no surface occupancy stipulations. In the decision below, BLM states that the oil and gas environmental analysis prepared for lands within the area administered by the Moab District Office, BLM, identifies lands involved in the lease offers as having resource values which could be irreparably damaged or destroyed if any surface occupancy were allowed. Further, in Ted C. Findeiss, 68 IBLA 167 (1982), the Board considered the same arguments raised by appellant herein. In that case the Board stated:

Appellant's reliance on Rocky Mountain Oil and Gas Association, supra, is misplaced. That case did not hold, as appellant alleges, that the Secretary may not condition the issuance of a lease upon execution of a no-surface occupancy stipulation. It held that issuing "shell" mineral leases with no development rights was an unconstitutional taking. However, in Sierra Club v. Peterson, Civ. No. 31-1230 (D.D.C. Mar. 31, 1982), the court stated:

The conclusion in [Rocky Mountain] that leases with no development rights result in an unconstitutional taking is of questionable validity. Moreover, in

this case, it is difficult to conceive how a bargained-for lease with restrictive stipulations (that both sides concede may prevent development) is tantamount to a taking in the constitutional sense.

(Slip Op. at 13, footnote omitted). In both of these cases, the courts were referring to the wilderness protection stipulation.

In the Findeiss case, supra, the Board upheld the requirement of a no surface occupancy stipulation for a lease offer including land within the Interstate 70 visual corridor.

For the reasons stated above, we find that BLM properly rejected parts of the involved lease offers and properly imposed on part of the lands sought no surface occupancy stipulations, which must be executed before the lease offers are granted. Ted C. Findeiss, supra; James M. Chudnow, 67 IBLA 360 (1982); Great White, Inc., 65 IBLA 310 (1982); Great White, Inc., 65 IBLA 207 (1982).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge